

HdL⁺ Companies

**ESD SALES TAX:
ESSENTIALS AND EMERGING ISSUES**
SAFE-D CONFERENCE
FEBRUARY 2020



Topics to Cover

- ESD Sales Tax: An Overview
 - Breakdown of Existing ESDs
 - Sales Tax Estimates & Elections
 - “Admin Only” Jurisdictions
- Comptroller Processes: Key Points
 - Key Roles and Functions
 - Navigating the Comptroller Relationship
 - Accessibility of Information
- Emerging Issues
 - Combined Areas and Sharing Agreements
 - Wayfair Ruling Basics
 - Remote Sellers and Single Local Tax Rate
 - Marketplace Providers
 - Proposed Rule Changes



ESD Sales Tax: An Overview



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ESD Sales Tax: An Overview

Evolution of ESD Sales Tax

Rate	2009		2019	
	# of ESDs	Total Net Payments	# of ESDs	Total Net Payments
0.250%	2	\$49,168	4	\$454,608
0.500%	10	\$11,370,900	22	\$24,525,520
0.625%	0	n/a	1	\$645,823
0.750%	1	\$157,201	2	\$1,460,496
1.000%	16	\$12,754,051	43	\$158,472,765
1.500%	4	\$493,419	27	\$31,944,197
1.750%	0	n/a	3	\$4,287,641
2.000%	4	\$4,350,956	24	\$38,072,340
Totals	37	\$29,175,697	126	\$259,863,390



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Sales Tax Estimates & Elections

ESD sales tax is governed by Local Tax Code as if a County

- Texas Tax Code
 - Title 3. Local Taxation
 - Title C. Local Sales and Use Tax
 - [Chapter 323. County Sales and Use Tax](#)

Local Jurisdictions may impose a rate of up to 2.00%

- Combined maximum local is 2%
- Must consider other sales tax jurisdictions already present
- Minimum of 1/8th % (.125%) increments

Voters must approve any new or increased sales tax!



Steps to Complete a Sales Tax Estimate

1. Contact Aubrey Mashburn at the Comptroller's office
 - Aubrey.Mashburn@cpa.Texas.gov
 - (512) 463-9634
2. Request an estimate for potential new or increased sales tax and provide:
 - Zip codes located in your District
 - Your contact information
3. Comptroller's office returns a list of active businesses in your ZIP codes
4. You must edit the list to only include those businesses that are in the geographic area to which the new or increased rate will apply
5. Comptroller will return an estimate of taxable sales for businesses that are subject to the new or increased rate
6. You will need to multiply the taxable sales figure by the new or increased tax rate to determine potential revenue for the District



Maximizing your sales tax revenue

Sales Tax Estimate “Limitations”

Sales tax **usually higher than** estimated because:

- Estimate focuses on taxpayers who:
 - Are inside the jurisdiction
 - Report sales tax based on their place of business
- Estimate does NOT include:
 - Service providers (cable, internet, trash collection, utilities, etc.)
 - Out of jurisdiction businesses
 - Businesses that self-report tax on purchases (Direct Pay taxpayers)
- Submitted list can be inaccurate
- Businesses filing incorrectly may skew estimate
- New businesses can open after estimate is made
- Economic environment can change after estimate



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ESD Sales Tax: An Overview

Your Election Passed..... Now What?

- You **MUST** communicate the results of your election to the Comptroller
 - Requirements include a map of the affected areas (the more detailed the better)
- Comptroller establishes effective date of new or increased sales tax
 - Will only ever be the first day of a calendar quarter (Jan. 1, April 1, July 1, Oct. 1)
 - The Comptroller requires a FULL calendar quarter lapse between receipt of your election results and the new (or increased) sales tax effective date
 - Allows for administrative changes to be made and businesses to be notified
 - First Allocation payment will be two months after effective date



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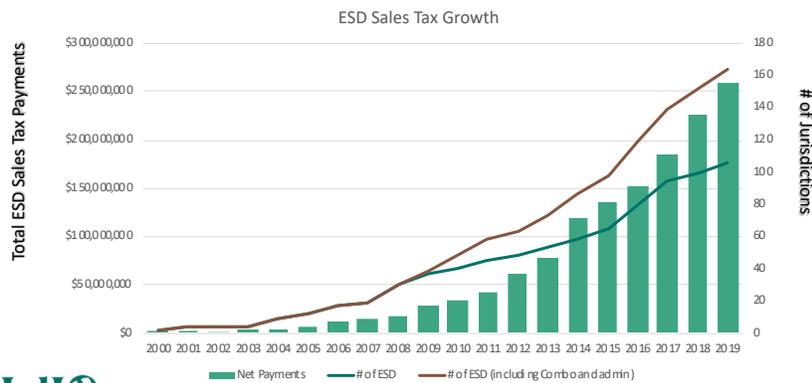
One Rate, Two Rates, What's Your New Rate?

- If your new sales tax rate does NOT apply to your entire jurisdiction
 - You will now be administering two separate local sales tax rates
 - The Comptroller will create an "admin only" jurisdiction
 - Ex: Hays County ESD 8 and Hays County ESD 8-A
 - You will receive two separate allocation payments each month
 - In the view of the Comptroller you now operate as two separate taxing jurisdictions

- Challenges associated with "admin only" jurisdictions
 - Lack of taxpayer awareness
 - Inaccuracies in taxpayer filings
 - Additional complexities related to financial management



ESD Sales Tax Growth (2000-2019)



Comptroller Processes: Key Points

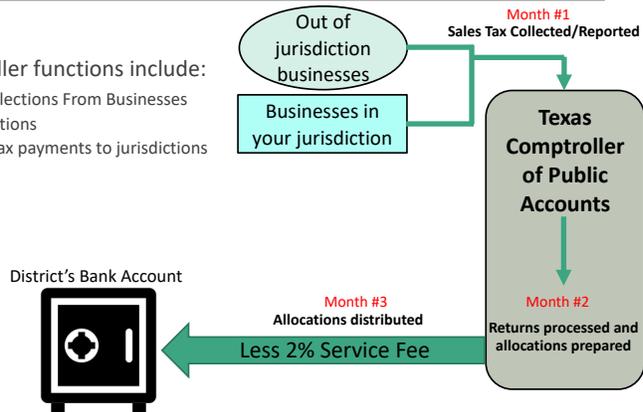


Comptroller Processes: Key Points

The Flow of Sales Tax Revenues:

Primary Comptroller functions include:

- Receiving Tax Collections From Businesses
- Processing Collections
- Allocating sales tax payments to jurisdictions



Additional Texas Comptroller Functions

- **Establishing and Enforcing** rules based on legislative actions
 - [Texas Tax Code, Title 2\(E\) Chapter 151](#). Limited Sales, Excise and Use Tax
 - Extremely complex and specific
 - Example: Landscaping business
 - General maintenance activities like mowing, sodding, and tree planting are taxable as real property services and local tax is sourced based on business location
 - Landscape design or installation of sprinkler systems, retaining walls, etc. are considered improvements and local tax is sourced based on jobsite
- **Auditing Businesses**
 - Business to audit selected at random (*sort of*)
 - 4,736 open audits* @ end of 2019
 - 10,353 audits* closed in 2019
 - 5,634 (54.4%) businesses owed money (deficiency)
 - 1,219 (11.8%) businesses overpaid (got a credit)

*includes sales and use tax audits as well as direct pay tax audits



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Navigating the Comptroller Relationship

- **What the Comptroller expects of Districts:**
 - Use [Comptroller website](#) to its fullest extent
 - Know basic sales tax statutes and rules
 - Do your own research and analysis
 - Check that new businesses are correctly registered
 - Know businesses located in their Jurisdiction and if they are subject to sales tax
 - Inform Comptroller of errors discovered
- **What Districts can expect of the Comptroller:**
 - Reports that must be requested on a monthly basis
 - Most require some level of cross-reference analysis to be useful
 - No business audit information
 - No confidential information in response to a question



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What Comprises Your Sales Tax Allocation?

- Comptroller distributes Allocation Payment Notice monthly which includes:
 - Current Period payments
 - Prior/Future Period payments
 - Audit collections
 - Single Local Tax Rate distribution
 - Comptroller’s Administrative Service Fees

- Breakdown is available via the Allocation Payment Detail
 - Go to <https://mycpa.cpa.state.tx.us/allocation/AllocDetail>
 - Select SPD
 - Select your District from drop down menu and click “Get Report”
 - Default information will be for the most current available month
 - Historical months can be accessed via the “Select Month” dropdown menu



Allocation Payment Detail

Allocation Period: Jan 2020	
(A) Total Collections: (=B+C+D+E+F+G)	159,985.64
(B) Prior Period Collections:	5,431.36
(C) Current Period Collections:	154,230.10
(D) Future Period Collections:	446.05
(E) Audit Collections:	-1,083.87
(F) Unidentified Collections:	25.12
(G) Single Local Rate Collections:	936.88
(H) Service Fee: (2% of A)	3,199.71
(I) Current Retained: (2% of C)	3,135.72
(J) Prior Retained: (2% Prior month C)	2,546.80
(K) Net Payment: (A-(H+I)+J)	156,197.01



Other Useful Reports

- Available via <https://comptroller.texas.gov/taxes/sales/>
 - Allocation Payment Distribution Schedule
 - Allocation Payment Historical Summary by jurisdiction
 - Allocation Comparison Summary Reports

- Available via monthly request [more info](#)
 - List of Sales and Use Tax Taxpayers Paid Up
 - List of Delinquent Sales and Use Tax Taxpayers
 - List of Businesses by ZIP Code or Jurisdiction
 - List of New Sales Tax Permit Holders
 - Sales Tax Area Report
 - Detailed Confidentiality Report



Additional Comptroller Resources

- <http://comptroller.texas.gov/contact.php>

- Sales and Use Taxes Helpline
 - 1-800-252-5555

- Tax Allocation Section, Revenue Accounting
 - 1-800-531-5441 ext 3-4530



Emerging Issues



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Emerging Issues

Combined Areas: Why Are They Noteworthy?

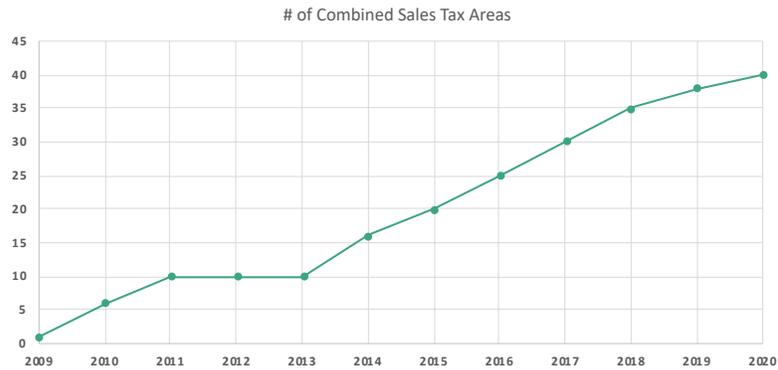
- Substantial growth in the number of Combined areas over the past 10 years
 - Driven by ongoing limited-purpose annexation activity by cities of all sizes
- Add a level of administrative complexity for impacted jurisdictions
- Combined Areas can be the vehicle for administering Interlocal Sharing Agreements



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Growth of Combined Sales Tax Areas



When is a Combined Area Created?

- When a City preforms a limited annexation of an area and imposing the City's sales tax rate would exceed the maximum allowed local sales tax rate of 2%
- The Comptroller automatically creates a Combined Sales Tax Area:
 - To preserve the existing District's sales tax rate
 - To enable the annexing City to collect any remaining sales tax available
 - To maintain a total local sales tax rate not to exceed 2%
- Tax reported under the Combined Sales Tax Area is automatically allocated to participating jurisdictions in the normal monthly allocation process
 - These monies are not uniquely identifiable in Monthly allocations
 - Unlike "admin only" districts, they will NOT be on a separate Allocation Payment Notice



Emerging Issues

When is a Combined Area Created?

City A
Code: 2000002
Rate: 1.5%

ESD 99
Code: 5000005
Rate: 1.0%

annex

City B
Code: 2000003
Rate: 2.0%

ESD 98
Code: 5000006
Rate: 1.5%

annex

New combo created
 Name: City A/ESD 99 Combo
 Code: 6000006
 Rate: 2.0%
 This breakdown is done internally by the Comptroller*
 1.0% ESD99 1.0% City A

New combo created
 Name: City B/ESD 98 Combo
 Code: 6000007
 Rate: 2.0%
 This breakdown is done internally by the Comptroller*
 1.5% ESD98 0.5% City B

*breakdowns can be modified with Sharing agreements signed by both parties




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Emerging Issues

What About Interlocal Sharing Agreements?

- A Sharing Agreement is a mutually accepted set of terms by which two jurisdictions agree to share sales tax revenue
- Why consider a sales tax sharing agreement:
 - partnership-building opportunity with City
- Administration
 - Not all sharing agreements can be administered by the Comptroller
 - For the Comptroller to administer a Sharing Agreement, it must apply only to a Combined Area
 - In our experience, Sharing Agreements administered by the Comptroller tend to be less of an administrative burden on the jurisdictions involved




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Wayfair Ruling: Why It Matters

- What is the Wayfair Ruling?
 - In June of 2018, the Supreme Court of the United States ruled that States are no longer barred from compelling remote sellers to collect tax
- Ok.... What is a remote seller?
 - A business whose only activities in Texas are the remote solicitation of sales (ex: internet sales, catalogs, TV infomercials, etc.)
- What was the rule before?
 - Only those businesses with physical presence (aka nexus) in Texas were subject to Texas sales and use tax regulations
- What does that mean for my ESD?
 - You have started (and will continue) to receive sales tax from remote sellers who previously did not report to your District



Wayfair Ruling Basics

- Ruling set the stage for a number of legislative changes:
 - Clarification of rules related to remote sellers:
 - Remote sellers now required to comply with Texas sales tax laws
 - Established a “safe harbor” for remote sellers whose total Texas revenues are less than \$500,000 annually
 - Option of a “Single Local Tax Rate”
 - Rate for 2020 is 1.75%
 - Tax is reported to a “state-wide pool”
 - Comptroller distributes tax to all sales tax jurisdictions monthly on a pro-rata basis
 - Requirements of “Marketplace Providers”
 - Comptroller definition of “marketplace”: *A physical or electronic medium through which persons other than the owner or operator of the medium make sales of taxable items. The term includes a store, internet website, software application, or catalog*
 - Marketplace providers are now required to collect sales tax on all sales made via their marketplace to customers in Texas



Wayfair, Marketplaces, Remote Sellers and Proposed Changes: What does it all mean for my District?

Marketplace Providers & Single Local Tax			
	Dec. 2019	Jan. 2020	Feb. 2020
Estimated Avg ESD Revenue	\$ 10,603	\$ 11,248	\$ 18,775
Estimated Avg % of ESD Revenue	5.60%	6.42%	7.36%



Proposed Rule Changes: Local Sales Tax Sourcing

Where we are today

- Local sales taxes are due to each local taxing jurisdiction in effect at the location where the sale is consummated
- There are 3 possible points of consummation
 - Texas place of business where the order was received
 - Texas place of business where the order was fulfilled
 - Ship-to location
- Important Definition
 - Texas place of business: *An established outlet, office, or location operated by a seller for the purpose of selling taxable items to those other than employees, independent contractors, and natural persons affiliated with the seller. Places of business include, but are not limited to, call centers, showrooms, and clearance centers. The term also includes any location operated by a seller at which the seller receives three or more orders for taxable items during a calendar year.*



Proposed Rule Changes: Local Sales Tax Sourcing

How that is determined today

If your order was...	and the order was...	then you'll collect...
received at a Texas place of business	placed in person	local tax where the order was received
	not placed in person and not fulfilled at a Texas place of business	
	not placed in person, but was fulfilled at a Texas place of business	local tax where the order was fulfilled
not received at a Texas place of business	fulfilled at a Texas place of business	local tax where the order was fulfilled
	not fulfilled at a Texas place of business	local tax at the "ship-to" location



Proposed Rule Changes: Local Sales Tax Sourcing

- The biggest point of contention is internet orders
- Currently, the flow of internet orders looks like this:

Internet Orders

If your order was...	and the order was...	then you'll collect...
received at a Texas place of business	placed in person	local tax where the order was received
	not placed in person and not fulfilled at a Texas place of business	
	not placed in person, but was fulfilled at a Texas place of business	local tax where the order was fulfilled
not received at a Texas place of business	fulfilled at a Texas place of business	local tax where the order was fulfilled
	not fulfilled at a Texas place of business	local tax at the "ship-to" location



Proposed Rule Changes: Local Sales Tax Sourcing

- The proposed change would make it so that internet sales, by definition, are NOT received at a Texas place of business
- This would impact what contributes to a location being recognized as a place of business

Internet Orders



If your order was...	and the order was...	then you'll collect...
received at a Texas place of business	placed in person	local tax where the order was received
	not placed in person and not fulfilled at a Texas place of business	
not received at a Texas place of business	not placed in person, but was fulfilled at a Texas place of business	local tax where the order was fulfilled
	fulfilled at a Texas place of business	local tax where the order was fulfilled
not received at a Texas place of business	not fulfilled at a Texas place of business	local tax at the "ship-to" location



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QUESTIONS

FOR ADDITIONAL INFORMATION CONTACT:
 RICHARD FLETCHER – VP OPERATIONS & CLIENT SERVICES
RFLETCHER@HDLCOMPANIES.COM

(512) 906-0429 EXT 513
 (713) 481-6975

WWW.HDLCOMPANIES.COM

